

Wisconsin Parents Coalition for the Retarded, Inc.

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TESTIMONY / SB 153

November 7, 2007

Judiciary & Corrections Committee

Good Afternoon. My name is Rebecca Underwood. I am a parent, a guardian, and hold an office on the Executive Board of the Wisconsin Parents Coalition for the Retarded. I am testifying in support of SB 153 for both myself and the Wisconsin Parents Coalition.

Section 74 (page 29) will revise 55.03 of the State Statutes and will clarify that only guardians who are also agencies will be prohibited from providing protective placement or protective services for their ward. The correction will actually return 55.03 of the Stats back to the working and intent which existed prior to the revision of the guardianship laws last year.

wording

Last year, in Wisconsin Act 387, by which Chapter 54 was created to replace Chapter 880, ALL guardians were stripped of the right to provide protective placement or services for their ward --- which in some cases was their own adult child. This should never have happened.

This prohibition on not allowing any guardian to provide protective placement or protective services for their own ward has impacted parents who were providing protective services to their incompetent adult child for whom the parents were also the guardians.

The current status of 55.03 allows my neighbor to be paid to provide protective services or placement to my adult child for whom I am guardian. I likewise can be paid to provide protective services or placement for her adult child for whom she is guardian. The current status of 55.03 prohibits either of us from providing protective placement or services for our own adult child for whom we are also guardian.

This does not make sense. Section 74 of Senate Bill 153 will restore to guardians, who are not agencies, the right to provide protective placement or protective services to their own ward.

I urge you to provide your stamp of approval to this bill and send it to the floor for passage.

Thank you.

Elder Law Section Board



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November 7, 2007

TO: Senate Committee on Judiciary and Corrections
FR: Betsy Abramson, Advisor, State Bar of Wisconsin Elder Law Section
RE: Support for SB 153 (AB 279)

Senate Bill 153 (companion bill Assembly Bill 279) is necessary to reconcile conflicting provisions of three very important and comprehensive acts passed by the Legislature last year. The first two acts, which arose out of the Legislative Council's Study Committee on the Recodification of Ch. 55, are 2005 Wisconsin Act 264, which recodified Ch. 55 of the statutes and 2005 Wisconsin Act 388, which modernized the elder abuse reporting system in Ch. 46 of the statutes and then created parallel provisions for protection of vulnerable adults under the age of 60. The third act, developed by our Elder Law Section, is 2005 Wisconsin Act 387, which overhauled the entire guardianship law in Ch. 880 of the statutes and placed it in a newly created Ch. 54 of the statutes. To add to the confusion, the first bill became effective November 1, 2006, but the other two did not become effective until December 1, 2006 and in some cases undid the changes that had become effective a month earlier.

Not surprisingly with legislation this comprehensive and large, and with different effective dates, the Revisor of Statutes found inconsistencies, conflicts and other small "glitches." This reconciliation bill therefore makes these small corrections in areas of the statutes where conflicting provisions are printed adjacent to each other; words are missing or repeated and other small errors. The bill will clarify the applicable law for practitioners, county staff and courts working in the areas of guardianship and adult protective services. Additionally, to reconcile existing conflicts between these three acts, the bill updates cross-references, makes technical terminology changes and deletes redundant provisions.

Thus, every provision of this bill simply selects which provision of the three passed acts should take effect. There are no substantive changes to the law in this reconciliation bill. The three initial bills were a long time in planning and comprehensive in scope. We urge swift adoption of this "clean-up" bill to aid in their implementation.

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If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045

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TO: Members of the Senate Judiciary Committee
FROM: Attorney Ellen Henningsen
Wisconsin Guardianship Support Center
DATE: November 7, 2007
RE: Senate Bill 153 (Guardianship Reconciliation Bill)

*Securing the present
and protecting
the future*

The Coalition of Wisconsin Aging Groups urges your approval of 2007 SB 153, which reconciles conflicts in several Acts passed last session covering guardianship, protective services and reporting of abuse.

Last session, the legislature passed 2005 Acts 264, 387 and 388. Act 264 amended statutes covering protective services and placement, primarily Ch. 55. Act 387 amended statutes covering guardianship, primarily creating Ch. 54. Act 388 amended the statutes covering the reporting of elder abuse and adult abuse, primarily Chs. 46 and 55. Some provisions in these Acts affected the same statutory provisions but the treatment in each bill was not always identical. Thus, SB 153 is needed to reconcile these already passed, but conflicting, provisions. In addition, SB 153 corrects cross-references, grammar, and redundant language.

The three laws that SB 153 reconciles are significant improvements in the law protecting vulnerable adults in Wisconsin. Given the size, complexity and overlapping subjects of the bills, along with their different origins and routes through the legislature, it is inevitable that there would be some areas that now need attention via a reconciliation bill.

Here's an example of the conflicts that need reconciling. The old guardianship statute included a provision that a hearing to appoint a guardian for the purpose of consenting to psychotropic medications is open to the public. This provision was repealed by Act 264 because of other provisions elsewhere in Act 264. But the provision was retained by Act 387, renumbering it to Ch. 54 and amending it. The Revisor did not give effect to Act 387's treatment because Act 264 had passed and become effective before Act 387. Thus, new Ch. 54 has no provision about whether a guardianship hearing is open or closed. SB 153 appropriately adopts Act 387's language, stating that a guardianship hearing is closed unless a motion to open the hearing is granted.

If not passed, portions of the statutes will continue to be confusing or incomplete - identical subsection numbers used for different provisions, some definitions not identical, some sections with provisions that aren't identical, etc. Passage of SB 153 ensures that our focus will be on successfully implementing these important improvements in the law affecting vulnerable adults, not on figuring out how to deal with confusion over unreconciled provisions.

CWAG urges your support for SB 153. Thank you for your consideration.